

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of	)	Case No.: <b>12-O-14754-PEM</b>
	)	<b>13-O-10698 (Cons.)</b>
<b>JUDSON THOMAS FARLEY,</b>	)	<b>DECISION</b>
	)	
<b>Member No. 83378,</b>	)	
	)	
A Member of the State Bar.	)	

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**Introduction**<sup>1</sup>

In this contested disciplinary proceeding, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) charges respondent Judson Thomas Farley in three client matters with five counts of professional misconduct for not obeying court orders and not reporting judicial sanctions.

This court finds, by clear and convincing evidence, that respondent is culpable of all charges. Based upon the nature and extent of culpability, as well as the applicable mitigating and aggravating circumstances, the court recommends, among other things, that respondent be suspended for two years, stayed, and placed on three years' probation with conditions, including restitution.

**Significant Procedural History**

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) initiated these proceedings by filing Notices of Disciplinary Charges (NDCs) on January 30 and July 15,

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<sup>1</sup> Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

2013 to which responses were filed on February 20 and August 2, 2013. The matters were consolidated on the latter date.

During the November 26, 2013, trial, the State Bar was represented by Catherine E. Taylor and respondent represented himself.

### **Findings of Fact and Conclusions of Law**

Respondent was admitted to the practice of law in California on November 29, 1978, and has been a member of the State Bar of California at all times since.

#### **Case No. 12-O-14754 – The Carter Matter**

##### **Facts**

On September 17, 2010, respondent was verbally ordered to pay \$8,005 in attorneys' fees and costs to Robert and Bobbie Carter. (*Carter v. Kaufman*, San Francisco Superior Court case no. CGC-08-472749.). On October 13, 2010, Judge Marla Miller signed the order, which was filed the next day. Respondent received the order shortly thereafter.

Between October 19, 2010 and March 21, 2012, the Carters made numerous attempts, both personally and through counsel, to collect the \$8,005 from respondent. He received these collection communications shortly after they were made but did not respond to them.

On March 21, 2012, the Carters served and filed a motion to compel compliance with court order and for sanctions in *Carter v. Kaufman*, which respondent received shortly thereafter. On April 18, 2012, Judge William Shapiro granted the motion and ordered respondent to pay the Carters a total of \$13,005 no later than April 20, 2012, and to pay \$1,500 in sanctions to the court immediately. Respondent received the order shortly thereafter. On May 16, 2012, notice of entry of the April 18, 2012 order was served on respondent and he received it.

On May 21, 2012, counsel for the Carters sent respondent a letter demanding compliance with the court orders and respondent received it. Respondent has not complied with the orders or

made any payment to the Carters or the San Francisco Superior Court. Respondent at trial in this court credibly testified that he wants to comply with the order but, since his only source of income is Social Security, he is unable to pay. The court believes that respondent would pay the Carters and the sanction order if he had the financial means.

On January 22, 2013, respondent reported to the State Bar the April 18, 2012 sanction order. Respondent also testified that, when the sanction order was issued, he was unaware of this reporting requirement.

## **Conclusions**

### ***Count 1- (§ 6103 [Failure to Obey a Court Order])***

Section 6103 provides, in pertinent part, that a willful disobedience or violation of a court order requiring an attorney to do or forbear an act connected with or in the course of the attorney's profession, which an attorney ought in good faith to do or forbear, constitutes cause for suspension or disbarment.

By not complying with the court orders filed on October 14, 2010, and April 18, 2012, respondent willfully disobeyed or violated orders of the court requiring him to do or forbear an act connected with or in the course of respondent's profession which he ought in good faith to do or forbear.

### ***Count 2 - (§ 6068, subd. (o)(3) [Failure to Report Sanctions])***

Section 6068, subdivision (o)(3), provides that within 30 days of knowledge, an attorney has a duty to report, in writing, to the State Bar the imposition of judicial sanctions against the attorney of \$1,000 or more which are not imposed for failure to make discovery.

By not reporting the \$1,500 sanction until January 22, 2013, respondent willfully violated section 6068, subdivision (o)(3) by failing to report to the State Bar, in writing, within 30 days of the time he had knowledge of the imposition of any judicial sanctions against him.

## **Case No. 13-O-10698 – The Zamora and Garcia Matters**

### **Facts**

#### ***The Zamora Matter***

On April 5, 2010, respondent filed a Chapter 11 bankruptcy petition on behalf of Rodolfo and Maria Zamora. (*In re Rodolfo and Maria Zamora*, U.S. Bankruptcy Court, N.D. Cal., case no. 10-53496-ASW). In April 2010, they paid him \$10,000 in advanced attorney's fees to represent them.

On October 11, 2011, the bankruptcy trustee filed a motion for examination and disgorgement of attorney's fees because respondent had not filed an application with the court to approve his employment as Chapter 11 debtor's counsel. At the April 12, 2012 motion hearing, respondent was orally ordered to pay the trustee's counsel's fees and costs incurred for appearing at the hearing.

On June 11, 2012, the bankruptcy court filed an order memorializing its oral order. Respondent was ordered to pay fees and costs in the amount set forth in the trustee's counsel's May 11, 2012 declaration which was previously submitted to respondent and to file and serve an application for *nunc pro tunc* employment, all by June 30, 2012. If he did not comply with these requirements, the trustee's motion for disgorgement would be granted. Respondent received the order shortly after it was filed.

Since respondent did not pay any fees or costs to the trustee's counsel, file an application for *nunc pro tunc* employment on or before June 30, 2012, or seek relief from the court's order, on July 10, 2012, he was ordered to disgorge \$11,350 in attorney's fees to the trustee. Although respondent received the order shortly after it was filed, he did not disgorge any of his fees or seek relief from the court's order. On August 23, 2012, the trustee filed a motion for sanctions and judgment against respondent for failing to obey the disgorgement order. On November 26,

2012, the motion was granted and respondent was ordered to pay the trustee \$11,350 in fees and \$2,112 in sanctions. Although respondent received the order shortly after it was filed, he did not disgorge any of the fees or pay the sanctions or move for relief from the court's order.

Respondent has not paid or disgorged any fees or sanctions to the trustee or trustee's counsel in the Zamoras' bankruptcy action, or sought relief from the bankruptcy court's November 26, 2012 order. Furthermore, respondent has not reported the November 26, 2012 sanction of \$2,112 to the State Bar.

### ***The Garcia Matter***

On November 1, 2010, respondent filed a Chapter 11 bankruptcy petition on behalf of Vicente Salas Garcia, Sr. and Gloria R. Garcia. (*In re Vicente Salas Garcia and Gloria R. Garcia*, U.S. Bankruptcy Court N.D. Cal. case no. 10-61405-ASW.)

On May 12, 2011, respondent filed an application to employ attorney stating that he had received a \$9,000 retainer fee from the Garcias. The court never granted respondent's application. On July 25, 2011, the court converted the Garcias' case from a Chapter 11 to a Chapter 7 bankruptcy proceeding. On March 30, 2012, the trustee filed a motion for examination and disgorgement of attorney's fees because the bankruptcy court had not authorized respondent's employment as Chapter 11 debtors' counsel.

Respondent did not appear at the May 15, 2012, hearing on the trustee's disgorgement motion. On May 17, 2012, the trustee's counsel filed and served a declaration stating that he had incurred \$1,377.67 in fees and costs for appearing at the May 15, 2012 hearing. Respondent received a copy of it.

Respondent appeared at the July 12, 2012, hearing on the trustee's disgorgement motion. The bankruptcy court ordered respondent to pay the fees and costs incurred by the trustee's counsel for appearing at the May 15, 2012 hearing. He did not pay any fees or costs to the

trustee's counsel, or move for relief from the court's order within a reasonable period of time following the order.

On October 3, 2012, the bankruptcy court filed and served an order requiring respondent to disgorge the \$9,000 in fees he received from the Garcias to the trustee, noting that the court had never authorized respondent's employment as debtors' counsel in the Chapter 11 case, and that respondent had not filed a motion to be employed as such *nunc pro tunc*. The order further provided that the order to disgorge fees should be considered a judgment in favor of the trustee. Respondent received the order shortly after it was filed, but did not disgorge any fees or move the court for relief from the order.

Respondent has not paid or disgorged any fees to the trustee or trustee's counsel in the Garcias' bankruptcy action, and has not sought relief from the bankruptcy court's order. At no time did respondent appeal or otherwise seek relief because of inability to pay the sanctions.

## **Conclusions**

### ***Counts 1 and 3 - (§ 6103 [Failure to Obey a Court Order])***

By not complying with the June 11, July 10, and November 26, 2012 court orders in the Zamora matter, respondent willfully disobeyed an order of the court requiring him to do an act connected with or in the course of respondent's profession which he ought in good faith do.

By not complying with the July 12 and October 3, 2012 court orders in the Garcia matter within a reasonable period of time, respondent willfully disobeyed an order of the court requiring him to do an act connected with or in the course of his profession which he ought in good faith do.

### ***Count 2 - (§ 6068, subd. (o)(3) [Failure to Report Sanctions])***

By not reporting the November 26, 2012 sanction in the Zamora matter to the State Bar respondent failed to report to the agency charged with attorney discipline, in writing, within 30

days of the time respondent had knowledge of the imposition of any judicial sanctions against him.

### **Aggravation<sup>2</sup>**

#### **Multiple Acts/Pattern of Misconduct (Std. 1.5(b).)**

Respondent committed multiple acts of misconduct.

#### **Harm to Client/Public/Administration of Justice (Std. 1.5(f).)**

Respondent represented the defaulting party in the Carter matter. The Carters had to pay \$12,785 to another law firm for assistance in collecting money from respondent due to Judge Shapiro's order. Moreover, the courts in all of the matters had to conduct various proceedings because of respondent's misconduct.

### **Mitigation**

#### **No Prior Record (Std. 1.6(a).)**

Respondent has no prior record of discipline in 35 years of practice, a significant mitigating factor.

#### **Other**

Respondent has experienced severe financial difficulties. Bankruptcy is his specialty. The downturn in the economy and his obligation to pay spousal support of \$2800 a month, which was half of his net income, have adversely affected him. His only source of income is Social Security. He would pay the sanctions if he were able. He is willing and able to pay \$400 per month toward the amounts owed.

### **Discussion**

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to

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<sup>2</sup> All references to standards (std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.1.)

Standard 1.7 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed must be the most severe of the applicable sanctions. (Std. 1.7(a).) Discipline is progressive. However, the standards do not require a prior record of discipline as a prerequisite for imposing any appropriate sanction, including disbarment. (Std. 1.8.)

Standards 2.8(a) and (b) apply in this matter, allowing a range of disciplinary recommendations from reproof to disbarment. The more severe sanction is prescribed by standard 2.8(a) which suggests disbarment or actual suspension for disobedience or violation of a court order related to an attorney's practice of law, the attorney's oath, or the duties required of an attorney under section 6068, subdivisions (a)-(h).<sup>3</sup>

The Supreme Court gives the standards "great weight" and will reject a recommendation consistent with the standards only where the court entertains "grave doubts" as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91, 92; *In re Naney* (1990) 51 Cal.3d 186, 190; std. 1.1.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291; std. 1.1.)

This case involved three clients and culpability of violating sections 6103 (three counts) and 6068, subdivision (o)(3) (two counts). In aggravation, the court considered multiple acts of

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<sup>3</sup> Standard 2.8(b) indicates that a reproof is appropriate for violations of sections 6068, subdivision (i), (j), (l) or (o).



misconduct and harm. Mitigating circumstances included no prior discipline in 35 years of practice, a significant consideration, and financial difficulties.

The State Bar recommends, among other things, two years' stayed suspension and restitution or payment of sanctions, as applicable. The court agrees as, in this instance, respondent's nonpayment of sanctions and restitution is not due to venality but to a lack of funds. He indicates a willingness and ability to pay \$400 per month toward the amounts owed. Moreover, respondent's 35 years of blemish-free practice is a significant mitigating factor. For these reasons, the court deviates from the range described in standard 2.8(a). (Std. 1.7(b), (c).)

The court found instructive *In the Matter of Respondent Y* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 862, in which an attorney failed to report to the State Bar and to pay court-ordered sanctions of \$1,000, resulting in a private reproof with conditions, including paying the sanctions. The Review Department considered that he had no prior record of discipline and the "narrow" ethical violations. (*Id.* at p. 869.) There were no aggravating factors. The instant matter merits greater discipline considering that there were multiple acts of misconduct, tempered by the significant mitigating factor of 35 years of blemish-free practice.

Having considered the facts and the law, the court believes that two years' stayed suspension with three years' probation on conditions, including payment of restitution and sanctions in installments, will be sufficient to protect the public in this instance.

### **Recommendations**

It is recommended that respondent JUDSON THOMAS FARLEY, State Bar Number 83378, be suspended from the practice of law in California for two years, that execution of that

period of suspension be stayed, and that respondent be placed on probation<sup>4</sup> for a period of three years subject to the following conditions:

1. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all of the conditions of respondent's probation.
2. Within 10 days of any change in the information required to be maintained on the membership records of the State Bar pursuant to Business and Professions Code section 6002.1, subdivision (a), including respondent's current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, respondent must report such change in writing to the Membership Records Office and the State Bar's Office of Probation.
3. Within 30 days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request.
4. During the probation period, respondent must report in writing quarterly to the Office of Probation. The reports must be postmarked no later than each January 10, April 10, July 10, and October 10 of the probation period. Under penalty of perjury, respondent must state in each report whether respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all of respondent's probation conditions during the preceding calendar quarter or applicable reporting period. If the first report would cover less than 30 days, no report is required at that time; however, the following report must cover the period of time from the commencement of probation to the end of that next quarter. In addition to all quarterly reports, a final report must be postmarked no earlier than 10 days before the last day of the probation period and no later than the last day of the probation period.
5. Subject to the assertion of applicable privileges, respondent must answer fully, promptly, and truthfully, any inquiries of the Office of Probation or any probation monitor that are directed to respondent personally or in writing, relating to whether respondent is complying or has complied with respondent's probation conditions.
6. Within one year after the effective date of the discipline herein, respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar's Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Ethics School. (Rules Proc. of State Bar, rule 3201.)

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<sup>4</sup> The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)

7. Respondent must pay restitution to the Payees listed below in the amounts listed below plus 10 percent interest per year from the dates listed below and furnish satisfactory proof to the State Bar's Office of Probation in Los Angeles as set forth below. If the Client Security Fund (CSF) has reimbursed a payee for all or any portion of the principal amount, respondent must pay restitution to CSF for the amount paid plus applicable interest and costs in accordance with Business and Professions Code section 6140.5. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

<u>Case No.</u>	<u>Payee</u>	<u>Principal Amount</u>	<u>Interest Accrues From</u>
12-O-14754	Robert & Bobbie Carter	\$8005.00	October 14, 2010
	Robert & Bobbie Carter	\$5,000.00	April 18, 2012
	San Francisco Superior Court ( <i>Carter v. Kaufman</i> case no. CGC-08-472749)	\$1,500.00	None
13-O-10698	Stromsheim & Associates (Trustee's counsel, <i>In re</i> <i>Rodolfo and Maria Zamora</i> , U.S. Bankruptcy Court, N.D. Cal., case no. 10-53496-ASW)	Amount as specified in Johnson declaration served May 11, 2012	None
	Marc Del Piero (Trustee, <i>In re</i> <i>Rodolfo and Maria Zamora</i> , U.S. Bankruptcy Court, N.D. Cal., case no. 10-53496-ASW)	\$11,350.00	July 10, 2012
	Marc Del Piero (Trustee, <i>In re</i> <i>Rodolfo and Maria Zamora</i> , U.S. Bankruptcy Court, N.D. Cal., case no. 10-53496-ASW)	\$2,112.00	November 26, 2012
	Stromsheim & Associates (Trustee's counsel, <i>In re</i> <i>Vincent Salas Garcia, Sr.</i> , & <i>Gloria R. Garcia</i> , U.S. Bankruptcy Court, N.D. Cal., case		

no. 10-61405-ASW)                      \$1,377.67                      July 12, 2012

Marc Del Piero  
(Trustee, *In re*  
*Vincent Salas Garcia, Sr.,*  
*& Gloria R. Garcia,*  
U.S. Bankruptcy Court,  
N.D. Cal., case  
no. 10-61405-ASW)

\$9,000.00                      October 3, 2012

8. Respondent must pay restitution according to the following payment schedule. With each quarterly report, or as otherwise directed by the Office of Probation, respondent must provide satisfactory proof of payment to the Office of Probation. No later than 30 days prior to the expiration of the probation period, respondent must make any necessary final payment in order to complete restitution, including interest, in full.

<u>Payee/Client Security Fund</u>	<u>Minimum Payment Amount</u>	<u>Payment Frequency</u>
San Francisco Superior Court	\$100.00	15 <sup>th</sup> of the month
Stromsheim & Associates	\$150.00	15 <sup>th</sup> of the month
Marc Del Piero	\$150.00	15 <sup>th</sup> of the month

At the expiration of the probation period, if respondent has complied with all conditions of probation, respondent will be relieved of the stayed suspension.

### **Multistate Professional Responsibility Examination**

It is recommended that respondent be ordered to take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court order imposing discipline in this matter, or during the period of respondent's suspension, whichever is longer and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

### **Costs**

It is recommended that costs be awarded to the State Bar in accordance with Business

and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: February \_\_\_\_\_, 2014

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PAT E. McELROY  
Judge of the State Bar Court